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MYANMAR

Legal Updates

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In this edition of our newsletter, we provide the following legal updates:

- **Extension of state of emergency** – the state of emergency declared in Myanmar on 1 February 2021 has been extended by a further period of six (6) months;
- **Update on sanctions** – we provide an update on the international sanctions programmes applicable to Myanmar;
- **Advisory on enhanced due diligence** – the United States government also issued an advisory to the business community on the need for heightened due diligence in Myanmar;
- **Proposed cybersecurity laws (restriction on VPNs)** – we provide an update on a proposed amendment of Myanmar's cybersecurity laws;
- **Myanmar banking sector update** – we provide an update on details on recent notifications and directives issued by the Central Bank of Myanmar ("CBM"); and
- **Minimum wage** – we provide an update of a recent announcement on the minimum wage in Myanmar.

Legal updates

1. Extension of the State of Emergency

On 31 January 2022, U Myint Swe issued Announcement No. 1/2022 of the National Defence and Security Council extending the state of emergency declared on 1 February 2021 by a further period of six (6) months. According to the Announcement, it is made by U Myint Swe as Pro Tem President under article 425 of Myanmar's Constitution of 2008. This followed a meeting of the National Defence and Security Council at 9:30am on the same day. Under article 425 of the Constitution, the National Defence and Security Council may extend a state of emergency for up to two periods of six (6) months each.



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2. Update on Sanctions

On 31 January 2022, the United States Treasury's Office of Foreign Assets Control ("OFAC"), United Kingdom and Canada further expanded the sanctions applicable to Myanmar to mark the anniversary of the state of emergency declared in Myanmar on 1 February 2021.

The OFAC expanded its list of Specifically Designated Nationals and Blocked Persons who are sanctioned under Executive Order 14014 titled Blocking Property With Respect To The Situation In Burma of 10 February 2021, to include the Directorate of Procurement of the Commander-In-Chief of Defense Services (Army) ("DDP"), Tay Za and his two (2) adult sons Htoo Htet Tay Za and Pye Phoo Tay Za, KT Services & Logistics Company Limited and its director Jonathan Myo Kyaw Thaug, and the senior government officials Thida Oo (the Union Attorney General), Tun Tun Oo (the Chief Justice of the Supreme Court of Myanmar) and Tin Oo (the Chairman of the Anti-Corruption Commission). Tay Za is already the subject of sanctions by the United Kingdom and Canada, and the DDP had been sanctioned by the United Kingdom and Canada on 10 December 2021.

The United Kingdom and Canada also expanded their respective lists of sanctioned individuals on 31 January 2022, with both sanctioning Thida Oo and Tin Oo. The United Kingdom also sanctioned the senior government official Thein Soe (the Chair of the Union Election Commission, who was previously sanctioned by the European Union on 22 March 2021 and by the OFAC and Canada on 17 May 2021) while Canada also sanctioned Tun Tun Oo.

Previously, on 10 December 2021, the OFAC had sanctioned Myo Swe Win (the Chief Minister of Bago Region), Saw Myint Oo (the Chief Minister of Kayin State), Maung Ko (the Chief Minister of Mandalay Region), Khat Htein Nan (the Chief Minister of Kachin State), the Directorate of Defence Industries of the Myanmar Ministry of Defence ("DDI"), the Quartermaster General Office ("QGO") and the Myanmar War Veterans Organisation ("MWVO").

The United Kingdom and Canada also expanded their respective lists of sanctioned entities on 10 December 2021, with both sanctioning the DDI, QGO, MWVO and DDP.

3. Advisory on Enhanced Due Diligence

On 26 January 2022, the United States Departments of State, the Treasury, Commerce, Labor, Homeland Security and the Office of the Trade Representative issued a business advisory titled "Risks and Considerations for Businesses and Individuals with Exposure to Entities Responsible for Undermining Democratic Processes, Facilitating Corruption, and Committing Human Rights Abuses in Burma (Myanmar) (the "Advisory").

The Advisory cautions businesses to be aware of the heightened risks of doing business in Myanmar, in particular, in dealings with state-owned enterprises; the gems and precious metals sector; real estate and construction projects; and arms, military equipment and related activities.

The advisory is available at this link:

https://home.treasury.gov/system/files/126/20220126_burma_advisory.pdf

All businesses operating in Myanmar would be advised to undertake a due diligence review of their operations to ensure they are undertaking the operations in Myanmar in an ethical and appropriate manner.

4. Proposed Cybersecurity Laws

The Myanmar Ministry of Transport and Communications has been seeking comments on proposed changes to Myanmar's cybersecurity laws. The draft bill has raised a number of concerns among stakeholders, including for data security and a requirement for a licence to use virtual private networks, which are used by many businesses to permit secure access to their IT systems. Among others, on 28 January 2022, the American Chamber of Commerce Myanmar, Australian Chamber of Commerce in Myanmar, British Chamber of Commerce, EuroCham Myanmar, French Myanmar Chamber of Commerce and Industry, German Myanmar Business Chamber, Greece - Myanmar Chamber of Commerce, Italy Myanmar Business Association, the US ICT Council for Myanmar and the Asia Internet Coalition published a joint statement expressing their concerns on the proposed legislation. It is not yet clear whether the Myanmar government will proceed with its proposed changes.

5. Myanmar's Banking Sector

(1) Liquidity measures.

The CBM has issued Notification No. 43/2021 dated 3 November 2021 imposing a cap of twenty million (20,000,000) kyats on cash payments for sales, purchases and transfers of capital assets and trading of goods and services and other payments. Payments in excess of this cap must be made electronically or by cheques or payment orders. This measure is intended to encourage use of banking services and prevent a greater reliance on cash transactions.

On 25 November 2021, the CBM also issued Directive No. 19/2021 amending the requirement for banks to hold a certain per cent of customer's deposits as reserves. This requirement had already been reduced from five (5) per cent of customers' deposits under Directive No. 10/2015 dated 17 February 2015, due to the stresses caused by COVID-19, to three (3) per cent of customers' deposits until 30 September

2021, under Directive No. 6/2021 dated 7 May 2021 (which extended Directive No. 6/2020 of the CBM dated 9 April 2020). Under Directive No. 19/2021, only seventy-five (75) per cent of the three (3) per cent needs to be made up of the current account deposits of bank customers, and the balance may be calculated based on the cash reserves of the bank.

We note that we are not aware of any formal extension by CBM of the reduction in the reserve requirement from five (5) to three (3) per cent which expired on 30 September 2021 under Directive No. 6/2021, although it appears to be operating on the basis that this requirement has been extended.

(2) Regulation of foreign exchange

The CBM has issued Directive No. 18/2021 effective as at 10 November 2021 directing banks holding an authorised dealer licence ("**AD Banks**") and holders of a money changer licence to conduct foreign exchange transactions at a price within five tenths (0.5) of a per cent of the CBM's published reference rate for the exchange of Myanmar kyats into foreign currencies. This directive replaces the CBM's Directive No. 12/2021 dated 10 September 2021 which had revoked the previous cap on foreign exchange transactions in Myanmar. As a result, foreign currencies can no longer be freely traded at the market rate in Myanmar.

The CBM has also taken a number of other measures to encourage exporters to bring their foreign currency earnings into the Myanmar financial system:

- The CBM amended rule 35 of the Foreign Exchange Management Regulations (set out in Notification No. 7/2014) to require AD Banks to confirm that exporters have brought their export earnings into Myanmar within three (3) months from the date of shipment of their goods for export. Previously, AD Banks were provided six (6) months to verify that the export proceeds had been brought to Myanmar.
- The CBM issued an announcement to six hundred and sixty-three (663) exporters on 2 November 2021 and three hundred and fifty-six (356) exporters on 20 December 2021 requesting them to seek settlement of all outstanding payments with their customers for goods exported in 2019 within thirty (30) days from the date of the announcement.

6. Labour Law Update

The Ministry of Labour ("**MOL**") issued an announcement on 27 December 2021 confirming that the minimum wage in Myanmar has not changed and remains at six hundred (600) kyats per hour, or four thousand eight hundred (4,800) kyats per day (based on an eight

(8) hour working day). While the minimum wage is required to be reviewed at least every two (2) years under section 5(h) of the Minimum Wage Law (Law No. 7/2013), the MOL notes in its announcement that the next review would be undertaken only once the COVID-19 situation in Myanmar stabilises.

The information provided in this newsletter is summary in nature and does not purport to be comprehensive or to render legal advice. Please contact our lawyers or email us at mhm_ygn_info@mhm-global.com if you would like to obtain advice about specific situations.

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